

2021 ADVANCED DUI TRIAL ADVOCACY

September 20 – September 22, 2021
Phoenix, Arizona



Wednesday, September 21, 2021

Corpus Delecti Rule

Presented by:

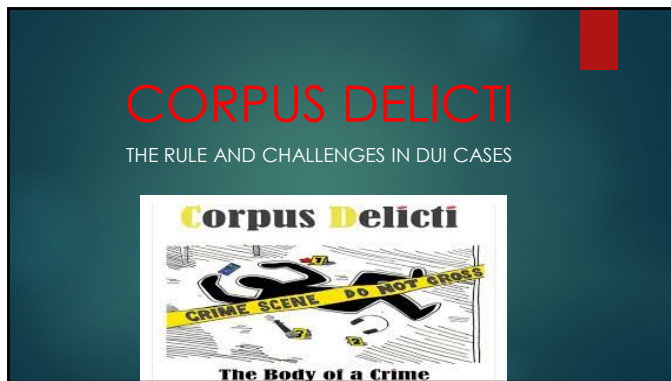
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What is the Corpus Delicti Rule?

"A defendant may not be convicted of a crime based upon an uncorroborated confession without independent proof of the corpus delicti, or the 'body of the crime.'"

State v. Morgan, 204 Ariz. 166, 61 P.3d 460 (App.2002)

The rule requires that, before a defendant's statements are admissible as evidence of a crime, the State must show both

- 1) Reasonable Inference of a crime and
- 2) Someone is responsible for that crime

State v. Jones, 198 Ariz. 18, 6 P.3d 323 (App.2000)

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Purpose of the Corpus Delicti Rule

The purpose of the rule is "to prevent a conviction based solely on an individual's uncorroborated confession, the concern being that such a confession could be false and the conviction thereby lack fundamental fairness."

State v. Flores, 202 Ariz. 221, 42 P.3d 1186 (App.2002)

"The rationale for the doctrine was the realization that a defendant's confession might be untrustworthy due to mental instability or improper police procedure."

McDougall v. Superior Court (Plummer RPI), 188 Ariz. 147, 933 P.2d 1215 (App.1996)

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Common Misconceptions

To satisfy the Corpus rule, the State must show that defendant drove impaired.

The corpus rule requires the State to prove the offense.

The corpus rule requires the State to prove the defendant committed the offense.

The corpus rule requires direct evidence of the offense.

The corpus rule requires an eyewitness who observed the defendant drive.

Witnesses who observed the defendant drive must testify in Court before the corpus is satisfied.

Hearsay statements are insufficient to establish corpus.

The State must demonstrate corpus beyond a reasonable doubt.



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Where does the corpus rule come from?

"The corpus rule was invented by courts," and although some states have codified the principle by statute, in most jurisdictions, including Arizona, it is "entirely a creature of the common law."

State v. Rubiano, 214 Ariz. 184, 150 P.3d 271 (App.2007) citing Thomas A. Mullen, *Rule Without Reason: Requiring Independent Proof of the Corpus Delicti as a Condition of Admitting an Extrajudicial Confession*, 27 U.S.F. L. Rev. 385, 387 (Winter 1993).

Not required by the: Federal/State Constitution
Rules of Criminal Procedure / Rules of Evidence
Statute

Is there another rule or practice that does not have a legal basis in the constitution, rules of procedure or statute?

Evidentiary Objections: Asked/Answered; Argumentative; Non-Responsive Answer
Moschetti v. City of Tucson, 9 Ariz. App. 108, 449 P.2d 945 (App.1969) - The general rule is only the interrogating counsel has the right to object.)

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When does the State show corpus?

As long as the State ultimately submits adequate proof of the *corpus delicti* before it rests, the defendant's statements may be admitted.

State v. Jones ex rel. County of Maricopa, 198 Ariz. 18, 6 P.3d 323 (App.2000)

The State need not present evidence supporting the inference of corpus delicti before it submits the defendant's statements.

State v. Morris, 215 Ariz. 324, 160 P.3d 203 (2007)

When the corpus delicti is later established, a variation in the order of proof does not prejudice the defendant.

State v. Gerlaugh, 134 Ariz. 164, 654 P.2d. 800 (1982)

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When does the State show corpus?

Not required at a preliminary hearing

State v. Jones ex. Rel. County of Maricopa, 198 Ariz. 18, 6 P.3d 323 (App.2000)

Not required at a probation revocation hearing

State v. Lay, 26 Ariz.App.64, 546 P.2d 41 (App.1976)

Not required at a guilty plea proceeding

State v. Rubiano, 214 Ariz. 184, 150 P.3d 271 (App.2007)

Not required in cases where the statements themselves are corpus delicti of the defined crime

State v. Daugherty, 173 Ariz. 548, 845 P.2d 474 (App.1992)

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A.R.S. § 28-1388(G)

A statement by the defendant that the defendant was driving a vehicle that was involved in an accident resulting in injury to or death of any person is admissible in any criminal proceeding without further proof of corpus delicti if it is otherwise admissible.

A.R.S. § 13-105(33) - Physical Injury means the impairment of physical condition.

Injury to "any person" – including the defendant?

"Accident" – does not specify accident/collision with another vehicle.



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Who Decides Corpus Delicti?

Application of the corpus delicti rule is for the trial court.

State v. Jones ex rel. County of Maricopa, 198 Ariz. 18, 6 P.3d 323 (App.2000)

Ariz. R. Evid. 104(a): In general, The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by the evidence rules, except those on privilege.

Ariz. R. Evid. 104(c): Conducting a hearing so that the jury cannot hear it. The Court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;



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What statements?

The corpus delicti doctrine ensures that a defendant's conviction is not based upon an uncorroborated confession or **incriminating statement**.

State v. Morris, 215 Ariz. 324, 333, 160 P.3d 203, 212 (2007)

The rule requires that, before a person's **incriminating statements** may be used as evidence, the State must present proof that a certain result has occurred and that someone is criminally responsible for that result, or, in other words, the State must present proof that someone committed the crime with which the defendant is charged

State v. Flores, 202 Ariz. 221, 222, 42 P.3d 1186, 1187 (App. 2002)



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Proof of Corpus Delicti

Remember: 1) **Reasonable Inference** of a crime and
2) **Someone** is responsible for the crime

Ariz. R. Evid. 104(a): In general, The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by the evidence rules, except those on privilege.

Hearsay can be used to prove the corpus.

State v. Gerlaugh, 134 Ariz. 164, 654 P.2d 800 (1982) (co-defendant's out-of-court statements admitted to establish corpus).



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Proof of Corpus Delicti

Only a reasonable inference of the corpus delicti need exist before incriminating statements may be considered, and circumstantial evidence can support such an inference.

State v. Morris, 215 Ariz. 324, 160 P.3d 203 (2007)

Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined.

RAJI Preliminary Criminal 4



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Corpus Delicti DUI Cases

State ex rel. McDougall v. Superior Court (Plummer RPI), 188 Ariz. 147, 933 P.2d 1215 (1996)

Facts: Officer observed truck strike median as it attempted a left turn. Two persons were in the cab. Officer observed male in the driver's seat and showed signs of intoxication. Male advised his wife, the defendant, had been driving but that they switched places after she struck the median. Defendant also exhibited signs of intoxication, performed poorly on FSTs and BAC test was above .10. Defendant moved to dismiss the case arguing State failed to satisfy *corpus delicti*.



Holding: There is corpus of DUI. There is evidence of drunk driving, improper control of a vehicle, and evidence that either Mr. or Mrs. Plummer was driving. Both showed signs of intoxication. Mr. Plummer told officers that his wife had been driving and was driving at the time of the collision. "These facts alone constitute the corpus and create at least a reasonable inference that some intoxicated person, possibly Ms. Plummer, was driving the truck when it struck the median."

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Corpus Delicti DUI Cases

State v. Gill, 234 Ariz. 186, 319 P.3d 248 (2014)

Facts: Police responded to residential neighborhood to report of "a possible drunk driver." Discovered that a truck collided with a parked boat. Nobody in or around the truck. Defendant lived several houses away. Officer went to defendant's home and saw him in process of showering. Defendant's girlfriend advised he had been out that night and police arrived about five minutes after he returned home. Advised that truck belonged to defendant's deceased friend and defendant drove it occasionally. Officers observed signs of impairment. Defendant admitted driving and thought he hit a curb.

Holding: Corpus delicti can be established by circumstantial evidence alone or through independent corroboration of the defendant's statements. The car accident suggested it was the result of DUI. The time, location, a striking a parked vehicle and someone fleeing the scene suggested that the accident was caused by "a possible drunk driver." The girlfriend reported that the defendant sometimes used the truck involved in the accident and his property was in it at the time. He was near the place where the accident occurred and visibly intoxicated around the same time. "This independent evidence corroborated his confession that he had been drinking and driving the vehicle involved in the accident."

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Corpus Delicti DUI Cases

State v. Nevins, 2018 WL 3301554 (App.2018) [Unpublished]

Facts: Fire Dept. responded to call for service in a parking lot. Vehicle parked across multiple parking spaces with engine running. Defendant unconscious in the driver's seat. Fire captain knocked on window repeatedly and took key from ignition. Police arrive to investigate. Defendant asked for license and attempted to hand officer her debit card. Signs of impairment. Defendant admitted drinking. HGN and PBT confirm.

Holding: Not raised at trial so reviewed for fundamental error. It was reasonable to infer that defendant drove as she was found in the driver's seat, late at night, in the parking lot, with the engine running and no passengers in the car.

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Citing Unpublished Memorandum Decisions

Rule 111(c) Rules of the Arizona Supreme Court

(c) Dispositions as Precedent.

- (1) Memorandum decisions of Arizona state courts are not precedential and such a decision may be cited only:
 - (A) to establish claim preclusion, issue preclusion, or law of the case;
 - (B) to assist the appellate court in deciding whether to issue a published opinion, grant a motion for reconsideration, or grant a petition for review; or
 - (C) for persuasive value, but only if it was issued on or after January 1, 2015; no opinion adequately addresses the issue before the court; and the citation is not to a depublished opinion or a depublished portion of an opinion.
- (2) A citation must indicate if a decision is a memorandum decision.
- (3) A party citing a memorandum decision must provide either a copy of the decision or a hyperlink to the decision where it may be obtained without charge.
- (4) A party has no duty to cite a memorandum decision.



AZ ST S CT Rule 111

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Corpus Delicti DUI Cases

State v. Villa, 179 Ariz. 486, 880 P.2d 706 (App.1994)

Facts: Defendant convicted of Aggravated DUI while license was suspended. Officer testified that he asked for driver's license and defendant produced a California identification card. When asked if he had a driver's license, the defendant responded it had been suspended. This was the only evidence of suspension admitted at trial.

Holding: Providing identification card and inability to provide driver's license sufficiently corroborated defendant's statement. Also, there was sufficient evidence of the underlying offense of DUI. The State was not required to present additional independent evidence on the additional element which raised the offense to an Aggravated DUI.

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Closely Related Crime

When a defendant confesses to several related crimes, independent evidence that establishes the commission of the closely related crimes may suffice to corroborate the confession as a whole, rendering it admissible.

State v. Morgan, 204 Ariz. 166, 61 P.3d 460 (App.2002)

We agree with *Morgan's* reasoning that, under our corpus delicti rule, independent evidence that establishes the commission of one crime may help corroborate the commission of other closely related crimes.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079 (2015).

What are other common offenses that may be "closely related" to DUI?

Leaving the scene - § 28-661 et. seq. *Commonwealth v. Verticelli*,
Reckless Driving - § 28-693(A) 706 A.2d 820 (1998)



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Evidentiary Hearing

If the defense files a motion to suppress / dismiss challenging corpus OR you anticipate the defense may raise the issue at trial, ask for a pretrial hearing pursuant to Rule 104(a) to address the issue before trial.

Though Rule 16.1(b) requires pretrial motions filed 20 days before trial, the State must establish corpus before admitting defendant's statements. If the defense raises the issue during trial and the court agrees, you have little or no remedy.

Failure to object to the admission of statements does not waive the defendant's right to question their admissibility for the purpose of proving corpus delicti. Defendant can wait until the State rests its case.

State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 (1983)



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Evidentiary Hearing

Factual circumstances to show: 1) Reasonable Inference and 2) Someone is responsible

Defendant's proximity to vehicle/scene
Proximity of collision to defendant's home
The absence or presence of others at the scene and proximity to vehicle/scene
Absence of other persons connected to the vehicle
Registered owner of vehicle
Evidence of a collision or other erratic driving
Circumstances of collision
Statements of defendant and witnesses
Signs and symptoms of alcohol/drug impairment – defendant and others related to the vehicle
Field Sobriety Tests and BAC tests
Injury to any person including defendant
Other closely related crimes



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Appellate Review

A court finding that the State failed to present sufficient evidence to satisfy corpus delicti is very rare. What are the appellate options?

A.R.S. § 13-4032 An appeal may be taken by the State from:

1. An order dismissing an indictment, information or complaint or count of an indictment, information or complaint.
6. An order granting a motion to suppress the use of evidence.

But, is a court's ruling precluding/suppress statements based on lack of corpus an order granting a motion to suppress the use of evidence?

State v. Bejarano, 219 Ariz. 518, 200 P.3d 1015 (App.2008). "A motion to suppress challenges only the constitutionality of the obtaining of evidence by the state and it is made before trial begins." quoting *State v. Lelevier*, 116 Ariz. 37, 567 P.2d 783 (1977).

Remember, corpus is not a constitutional requirement. Is the state required to proceed by special action?

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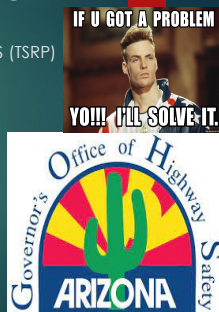


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